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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **AT TACOMA**

11 WILLIAM ALVIE MARLOW,

12 Petitioner,

13 v.

14 SCOTT FRAKES,

15 Respondent.

NO. C09-5455 RJB/KLS

ORDER DENYING PETITIONER'S  
MOTION FOR THIRD EXTENSION  
OF TIME, FOR "THIRD PARTY  
STAMP" AND DIRECTING  
PETITIONER TO SHOW CAUSE

16 Before the Court is Petitioner's third motion for an extension of time within which to  
17 submit an amended petition and service copies. Dkt. 10. Petitioner now requests a 180 day  
18 extension. *Id.*, p. 2. Petitioner also requests that the court issue an "entitlement" to a Mr.  
19 McCain, who is assisting Petitioner, so that Mr. McCain may retain Petitioner's legal  
20 materials in his cell for review. *Id.*

21 Petitioner filed a petition for writ of habeas corpus on July 28, 2009. Dkt. 1. On July  
22 31, 2009, the Court Clerk sent a letter to Petitioner advising him that he had failed to provide  
23 the court with sufficient service copies of his petition. Dkt. 2. Petitioner was given a  
24 deadline of September 2, 2009 to provide service copies of his petition. *Id.*

25 On August 25, 2009, Petitioner filed a motion for a 90 day extension of time to correct  
26 errors in his opening brief and to provide service copies of his petition. Dkt. 3. He also filed

1 his proposed exhibits. Dkt. 4. On August 31, 2009, the court received four service copies of  
2 the petition, but the service copies did not contain copies of Mr. Marlow's last two exhibit  
3 pages.<sup>1</sup> On September 1, 2009, the court granted an extension on Mr. Marlow's deadline to  
4 file his opening brief and provide service copies of his petition until November 16, 2009. Dkt.  
5 6.

6 Petitioner's latest request for a 180 day extension is unreasonable and unsupported.  
7 Petitioner has had four months since the filing of his original petition to either provide the  
8 court with service copies of his petition and exhibits, to amend his petition, and/or to file his  
9 opening brief. Petitioner bases his request for the additional delay on the need to provide  
10 portions of the state court record as part of his opening brief. Dkt. 10, p. 3. However,  
11 Petitioner is advised that, under Rule 5(c) of the rules governing § 2254 cases, the respondent  
12 shall indicate in the answer to a habeas petition what transcripts are available and what  
13 proceedings have been recorded but not transcribed. The State must attach to its answer any  
14 parts of the transcript it deems relevant. Once this is done, the court, on its own motion or  
15 upon request of the petitioner may order that further portions of the existing transcripts be  
16 furnished or that certain portions of the non-transcribed proceedings be transcribed and  
17 furnished. Rules Governing Section 2254 Cases in the U.S. Dist. Cts., 28 U.S. C. Pt. VI, ch.  
18 153, Rule 5 (emphasis added); *Simental v. Matrisciano*, 363 F.3d 607, 612 (7th Cir. 2004). As  
19 noted by the *Simental* court, on habeas review, except in limited circumstances, the district  
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23 <sup>1</sup>On August 31, 2009, Mr. Marlow filed a second motion for extension of time and  
24 advised the court that the petition he originally filed with the court was incomplete and  
25 contained errors. Dkt. 5. Mr. Marlow requested an extension until "mid-November" to  
26 complete and submit his corrected habeas petition. *Id.* That motion was denied as moot as the  
court had already provided Petitioner an extension until November 16, 2009. Dkt. 7.

1 court does not make independent factual determinations. *Id.* (citing 28 U.S.C. § 2254(e));  
2 *United States ex rel. Green v. Greer*, 667 F.2d 585, 586 (7th Cir. 1981) (an examination of a  
3 record is not required if the petitioner fails to identify any incompleteness or inaccuracies in  
4 the facts before the district court.) Under Rule 5, the determination of relevance is left to the  
5 discretion of the respondent. A demand for further documentation can only be executed by  
6 court order *sua sponte* or by request of the petitioner. § 28 U.S.C.A. 2254, Rule 5, Advisory  
7 Committee Notes, 1976 Adoption. Upon such a request the burden is placed on the petitioner  
8 to prove to the court that the excluded materials requested are relevant and necessary. When a  
9 dispute concerning relevance arises, the burden is on the petitioner to prove to the court that  
10 the excluded materials are necessary for the petition. *Richmond v. Ricketts*, 640 F.Supp. 767  
11 (Ariz. 1986).  
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14 Petitioner's request that the court grant his "reader/writer assistant" with a "Third Party  
15 Stamp, with instructions that said entitlement is solely to allow" Mr. McCain to retain  
16 petitioner's legal materials in Mr. McCain's cell (Dkt. 10, p. 2) is without merit and cannot be  
17 granted. The court lacks jurisdiction to direct the Department of Corrections to "entitle" such  
18 assistant with the right to keep Mr. Marlow's legal materials in his cell.<sup>2</sup>  
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20 Accordingly, it is **ORDERED**:

21 (1) Petitioner's third motion for an extension of time (Dkt. 10) is **DENIED**.  
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24 <sup>2</sup> Petitioner is further advised that a pro se party may not represent the interests of other  
25 persons. Although a non-attorney may appear pro se on behalf of himself, he has no authority  
26 to appear as an attorney for others. *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697  
(9th Cir. 1987); *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997).

1 (2) Petitioner may proceed on his original petition or may file an amended petition  
2 and/or opening brief. If Petitioner wishes to proceed on his original petition, he should so  
3 advise the court in writing on or before **December 18, 2009**. If Petitioner desires to file an  
4 amended petition and/or opening brief, he shall do so on or before **December 18, 2009**.  
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6 (3) The Clerk is directed to send copies of this order to Petitioner.  
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8 **DATED** this 2nd day of December, 2009.  
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11 Karen L. Strombom  
12 United States Magistrate Judge  
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